

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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EBERTO BAUTISTA-EREDEA, Case No. 3:20-cv-00403-LRH-CLB

Petitioner, ORDER

v.

GARRETT, et al.,

Respondents.

28 U.S.C. § 2254 habeas corpus petitioner Eberto Bautista-Eredea has submitted a second motion for appointment of counsel (ECF No. 20) as well as a motion for leave to file an amended petition (ECF No. 21). Respondents have responded to both, and Bautista-Eredea replied (ECF Nos. 23, 24). As discussed below, the court grants both motions.

There is no constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir.1993). The decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir.1986), cert. denied, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), cert. denied, 469 U.S. 838 (1984). However, counsel must be appointed if the complexities of the case are such that denial of counsel would amount to a denial of due process, and where the petitioner is a person of such limited education as to be incapable of fairly presenting his claims. See *Chaney*, 801 F.2d at 1196; see also *Hawkins v. Bennett*, 423 F.2d 948 (8th Cir.1970).

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1 Bautista-Eredea's first motion for counsel was a form motion that merely
2 asserted that the issues were too complex for his comprehension (see ECF No. 5).
3 However, because his petition was clear and the remaining legal issues did not appear
4 to be particularly complex, the court concluded that counsel was not warranted (see
5 ECF No. 3).

6 Bautista-Eredea now explains that he speaks Spanish and had an interpreter at
7 his trial (ECF No. 20). He states, through the help of second inmate, that while he
8 intended to raise all issues that he raised in his direct appeal and state postconviction
9 petition, the inmate who assisted him in his original federal petition only raised three
10 grounds for relief. *Id.* Bautista-Eredea attached a proposed amended petition to his
11 motion for leave to file an amended petition, which appears to include the claims he
12 asserted in his state proceedings (ECF Nos. 21, 21-1).

13 Responding to both motions, respondents state that they reviewed Bautista-
14 Eredea's state proceedings and confirm that he had an interpreter for his criminal
15 proceedings (ECF No. 23). While they note that they cannot otherwise make any
16 assertions about Bautista-Eredea's language fluency, they defer to the court with
17 respect to appointment of counsel. They further state that they have no specific
18 objection to Bautista-Eredea filing an amended petition. The court, therefore, grants the
19 motion for appointment of counsel and the motion for leave to file an amended petition.

20 **IT IS THEREFORE ORDERED** that petitioner's motion for appointment of
21 counsel (ECF No. 20) is **GRANTED**.

22 **IT IS FURTHER ORDERED** that the Federal Public Defender for the District of
23 Nevada (FPD) is appointed to represent petitioner.

24 **IT IS FURTHER ORDERED** that petitioner's motion for leave to file an amended
25 petition (ECF No. 21) is **GRANTED**. The Clerk is directed to detach and FILE the
26 amended petition (ECF No. 21-1).

27 **IT IS FURTHER ORDERED** that the Clerk **ELECTRONICALLY SERVE** the FPD
28 a copy of this order, together with a copy of the original petition for writ of habeas

1 corpus (ECF No. 4) and the amended petition (ECF No. 21-1). The FPD has **30 days**
2 from the date of entry of this order to file a notice of appearance or to indicate to the
3 court its inability to represent petitioner in these proceedings.

4 **IT IS FURTHER ORDERED** that after counsel has appeared for petitioner in this
5 case, the court will issue a scheduling order, which will, among other things, set a
6 deadline for the filing of any further amended petition.

7 **IT IS FURTHER ORDERED** that respondents' motion to dismiss (ECF No. 8) is
8 **DISMISSED** without prejudice.

9 **IT IS FURTHER ORDERED** that respondents' motion for extension of time to
10 respond to the motion for appointment of counsel (ECF No. 22) is **GRANTED** *nunc pro*
11 *tunc*.

12 DATED this 28th day of April, 2021.

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15 LARRY R. HICKS
16 UNITED STATES DISTRICT JUDGE

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